

REMARKS

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 1-10, drawn to a surface modified inorganic powder; and

Group II: Claims 11-12, drawn to a polar resin composite.

Applicants have elected Group I, claims 1-10, drawn to a surface modified inorganic powder, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctness (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing sufficient reason and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I and III as mutually exclusive species in an intermediate-final product relationship. Patentable distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (M.P.E.P. § 806.04(b), 3rd paragraph), and the species are patentably distinct (M.P.E.P. § 806.04(h)). The Examiner asserts that the intermediate product is useful as a component in a composite comprising other resins than the ones recited in Group II, and that Groups I and II are patentably distinct because there is nothing on the record to show them as obvious variants.

However, the Examiner's assertions are not evidence that the claimed surface modified inorganic powder is useful in any other specific product, other than what is presently claimed. In addition, the Examiner has not explained or shown why the alleged species are mutually exclusive. The Examiner merely makes a general comment about the

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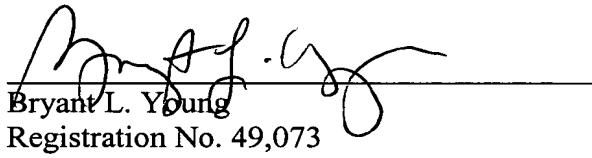
record allegedly does not show, without anything further. Therefore, the Examiner has not met the requirements under §§ 806.04(b) and 806.04(h). Accordingly, the restriction is believed to be improper.

Accordingly, for at least the reasons presented above, withdrawal of the requirement is respectfully requested.

Applicants submit this application is now in condition for examination on the merits, and early notification of such action is earnestly solicited.

Respectfully submitted,

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